

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jihan Varisco	Team: Team # 5	CCRB Case #: 201106881	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/18/2011 10:49 PM	Location of Incident: 120th Precinct stationhouse	Precinct: 120	18 Mo. SOL 11/18/2012	EO SOL 11/18/2012	
Date/Time CV Reported Fri, 05/27/2011 2:28 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 05/27/2011 2:28 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			120 PCT
2. POM Michael Alfieri	14875	942938	120 PCT
3. POM Alex Toro	27242	927597	120 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Bekim Kalicovic	02478	936834	120 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Alex Toro	Force: PO Alex Toro used physical force against § 87(2)(b)	
B.POM Michael Alfieri	Force: PO Michael Alfieri used physical force against § 87(2)(b)	
C. An officer	Force: An officer used pepper spray against § 87(2)(b)	
D. An officer	Abuse: An officer damaged § 87(2)(b)'s property.	

### Case Summary

On May 27, 2011, § 87(2)(b) filed this complaint with the CCRB by telephone.

On May 18, 2011, at approximately 10:49 p.m., § 87(2)(b) was arrested for assaulting § 87(2)(b) on a bus outside the 120<sup>th</sup> Precinct stationhouse. The following allegations resulted:

- **Allegation A – Force:** PO Alex Toro used physical force against § 87(2)(b). The § 87(2)(g)
- **Allegation B – Force:** PO Michael Alfieri used physical force against § 87(2)(b). The § 87(2)(g)
- **Allegation C – Force:** An officer used pepper spray against § 87(2)(b) § 87(2)(g)
- **Allegation D – Abuse of Authority:** An officer damaged § 87(2)(b)'s property. The § 87(2)(g)

This case was investigated by Investigator Lesley Henry until she departed for maternity leave. On April 11, 2012, it was assigned to the undersigned investigator.

### Results of Investigation

#### Civilian Statements

##### Complainant/Victim: § 87(2)(b)

- *At the time of his interview,* § 87(2)(b)

#### CCRB Testimony

On May 27, 2011, § 87(2)(b) provided an initial statement when filing his complaint (encl. 3). Also on § 87(2)(b) he provided a statement to medical personnel at § 87(2)(b) (encl. 4A). On June 1, 2011, § 87(2)(b) was interviewed at the CCRB (encl. 4B-F). On § 87(2)(a) Gen. Mun. § 50-b(3) (encl. 4H-W). His statements were generally consistent.

On May 18, 2011, at approximately 10:49 p.m., § 87(2)(b) entered a bus at the Ferry Terminal in Staten Island. He had consumed 1.5 cups of Sky Vodka earlier and was slightly intoxicated. An individual identified by the investigation as § 87(2)(b) had entered before § 87(2)(b) accidentally bumped into § 87(2)(b) he apologized and continued walking toward the back of the bus. § 87(2)(b) glared at § 87(2)(b) angrily and said something to the effect of, “You should watch where you’re going.” § 87(2)(b) initially ignored § 87(2)(b). However, he then stood up to apologize again; when he did so § 87(2)(b) approached and pushed him in the chest. § 87(2)(b) fell onto his back on the floor of the bus. § 87(2)(b) grabbed the back of § 87(2)(b)'s jacket and pulled it over his head. § 87(2)(b) was unable to move and he was held in this position for approximately five minutes. § 87(2)(b) initially denied carrying anything, but subsequently admitted to carrying an umbrella. However, he denied striking § 87(2)(b) with the umbrella.

The bus stopped in front of the 120<sup>th</sup> Precinct stationhouse. An officer identified by the investigation as PO Alex Toro of the 120<sup>th</sup> Precinct entered the bus and lifted § 87(2)(b) up by his shoulders. § 87(2)(b) did not push, punch, or kick PO Toro. PO Toro pushed § 87(2)(b) off the bus and against a parked car. PO Toro held both of § 87(2)(b)'s hands behind his back with his left hand and punched § 87(2)(b) in the center of his forehead and nose with his right hand approximately four times. PO Toro handcuffed him without trouble; § 87(2)(b) did not attempt to pull his hands away. After he was handcuffed, six additional officers immediately punched § 87(2)(b) in his head, face and body. § 87(2)(b) was taken into the stationhouse.

Inside the stationhouse, § 87(2)(b) was seated in front of the desk. An unidentified officer stomped on § 87(2)(b)'s hand and also his cell phone, which was on the floor. This action caused the phone to break. The same officer proceeded to pepper spray § 87(2)(b) in the face for approximately one minute. The officer eventually washed § 87(2)(b)'s face with water. § 87(2)(b) refused medical attention because he did not want to delay his court appearance.

On May 27, 2011, after being released from custody, § 87(2)(b) went to § 87(2)(b). § 87(2)(b) alleged that he was diagnosed with a broken nose, swollen face and right hand, scrapes to his right shin, and pain all over his body. § 87(2)(b) described all of the officers as white male between 5'8" and 6'0" tall. The unidentified officer in the stationhouse was in plainclothes; all of the other officers described were in uniform.

#### **Arrest Photograph (encl. 4G)**

§ 87(2)(b)'s arrest photograph shows no apparent physical injuries.

#### **Witness:** § 87(2)(b)

- *At the time of his statement,* § 87(2)(b)

#### **CCRB Testimony**

On June 15, 2011, § 87(2)(b) provided a telephone statement to the CCRB (encl. 5).

On May 18, 2011 at approximately 10:49 p.m., § 87(2)(b) was on a bus in front of the 120<sup>th</sup> Precinct stationhouse. A male identified by the investigation as § 87(2)(b) entered the bus and appeared extremely upset. He yelled aloud, "No one can mess with me." § 87(2)(b) sat next to a male identified by the investigation as § 87(2)(b) struck § 87(2)(b) in the mouth with an umbrella. He then ran toward the front of the bus and attempted to tackle an unidentified black male, who pushed § 87(2)(b) to the floor and held him there. In order to keep § 87(2)(b) in place, the male slammed him onto the floor several times. § 87(2)(b) did not observe any blood on § 87(2)(b). An officer identified by the investigation as PO Alex Toro entered the bus and lifted § 87(2)(b) by his arms. § 87(2)(b) stated, "Get the fuck off of me nigga." § 87(2)(b) was removed from the bus. § 87(2)(b) continued to observe § 87(2)(b) through the window of the bus. He was placed in handcuffs and walked into the stationhouse. No officers punched him or dragged him across the ground. § 87(2)(b) agreed to provide a statement about the incident and was brought into the stationhouse. Once inside, he observed § 87(2)(b) seated on a bench in handcuffs. He remained inside the stationhouse for approximately fifteen minutes; during this time he did not see any force used against § 87(2)(b).

Between June 9, 2011, and July 15, 2011, § 87(2)(b) was called five times and sent two letters. On June 15, 2011, he scheduled an interview for June 17, 2011. However, he failed to appear for this appointment.

### **Attempts to Contact Civilians**

Between June 2, 2011, and July 15, 2011, § 87(2)(b) and § 87(2)(b) a witness identified through police documentation, were each called five times and sent two “Please Call” letters. As of the date of this report, neither has contacted the CCRB.

### **NYPD Statements**

#### **Subject Officer: PO ALEX TORO**

- *PO Toro is a § 87(2)(b).*
- *On the date of the incident, PO Toro worked in uniform from 3:00 p.m. until 11:35 p.m. He was assigned to the Jersey Street Auto with PO Monkai Lewis.*

#### **Memo Book (encl. 6A-C)**

PO Toro’s memo book entries indicate that at 10:40 p.m. an assault occurred on an MTA bus in front of the 120<sup>th</sup> Precinct stationhouse.

#### **CCRB Testimony**

On September 15, 2011, PO Toro was interviewed at the CCRB (encl. 6D-E).

On May 18, 2011, at approximately 10:49 p.m., PO Toro was in the parking lot of the 120<sup>th</sup> Precinct stationhouse. He observed two males involved in a fight on a bus in front of the stationhouse. PO Toro requested additional officers and ran onto the bus. PO Toro grabbed an unidentified black male and pulled him off the other male, identified by the investigation as § 87(2)(b). PO Toro then attempted to grab § 87(2)(b). § 87(2)(b) said, “Get the fuck off of me,” and punched and kicked at PO Toro. PO Toro told § 87(2)(b) to calm down. Both § 87(2)(b) and the unidentified male had sustained swelling to their faces, but § 87(2)(b) was not bleeding.

Additional officers, including PO Matthew Alfieri, entered the bus. PO Alfieri and two unidentified officers removed § 87(2)(b) from the bus. PO Toro did not observe any officers punch § 87(2)(b) in the face. PO Toro remained on the bus and spoke with the unidentified male. There was another Hispanic male on the bus with visible injuries to his nose and the civilians explained to PO Toro that § 87(2)(b) had struck the him with an umbrella and that the black male had been defending himself.

PO Toro entered the stationhouse and observed § 87(2)(b) seated on a bench near the front desk. PO Toro did not pepper spray § 87(2)(b) or see any other officers do so. PO Toro did not observe any plainclothes officers engaged with § 87(2)(b). PO Toro did not observe any officers step on § 87(2)(b)’s hand or cell phone.

#### **Witness Officer: PO MICHAEL ALFIERI**

- *PO Alfieri is a § 87(2)(b).*
- *On the date of the incident, PO Alfieri worked in uniform from 3:00 p.m. until 4:05 a.m. He was assigned to patrol with PO Dimitriy Zabrovskiy.*

#### **Memo Book (encl. 7A-C)**

PO Alfieri’s memo book entries indicate that at 10:49 p.m. he arrested § 87(2)(b) for assault in the second degree. § 87(2)(b) refused to provide his information or be fingerprinted and he was lodged inside of the holding cells.

#### **On-Line Booking Sheet/UF-61 Complaint Report (encl. 7D-H)**

The OLBS and UF-61 note that § 87(2)(b) assaulted § 87(2)(b) with an umbrella. He then flailed his arms and kicked when the officers attempted to handcuff him.

### **Criminal Court Complaint (encl. 7I)**

The Criminal Court Complaint notes that § 87(2)(b) struck § 87(2)(b) in the mouth with an umbrella, causing lacerations, swelling, and redness. He flailed his arms and kicked when PO Alfieri attempted to arrest him.

### **Property Voucher (encl. 7J)**

The Property Voucher prepared by PO Alfieri notes that § 87(2)(b)'s cell phone was damaged. It was vouchered for safekeeping.

### **CCRB Testimony**

On August 10, 2011, PO Alfieri was interviewed at the CCRB (encl. 7K-L).

On May 18, 2011, at approximately 10:49 p.m., PO Alfieri was inside the 120<sup>th</sup> Precinct stationhouse when he received a radio transmission that an officer needed assistance. PO Alfieri immediately exited and observed PO Toro on a public bus holding a male identified by the investigation as § 87(2)(b). § 87(2)(b) was flailing his arms and kicking his legs. PO Alfieri entered the bus through the front door and proceeded to assist PO Toro. He held § 87(2)(b) by the arms and escorted him off of the bus. § 87(2)(b) resisted by moving his body around. § 87(2)(b) was positioned against a car and handcuffed. PO Alfieri denied that he or any other officers punched § 87(2)(b).

PO Alfieri and another unidentified officer held § 87(2)(b) underneath his arms and dragged him across the street into the stationhouse. § 87(2)(b) was placed in a seated position on a chair in front of the front desk. PO Alfieri did not observe any officers step on § 87(2)(b)'s hand or cell phone. § 87(2)(b) said he had been pepper sprayed; however, PO Alfieri did not use his pepper spray or see any other officers do so.

### **Witness Officer: SGT BEKIM KALICOVIC**

- *Sgt. Bekim Kalicovic is a § 87(2)(b).*
- *On the date of the incident, Sgt. Kalicovic was the 120<sup>th</sup> Precinct desk officer. He worked in uniform from 2:50 p.m. until 11:47 p.m.*

### **Memo Book**

Sgt. Kalicovic made no memo book entries regarding the incident due to the fact that he was the desk officer.

### **CCRB Testimony**

On September 20, 2011, Sgt. Kalicovic was interviewed at the CCRB (encl. 8A-B). His statement was generally consistent with those of PO Toro and PO Alfieri.

When Sgt. Kalicovic first saw § 87(2)(b) he was facing a parked car and PO Toro and PO Alfieri were attempting to handcuff him. § 87(2)(b) held his arms in front of him and refused to place them behind his back. PO Alfieri and PO Toro grabbed § 87(2)(b)'s arms and struggled to bring them behind his back. Sgt. Kalicovic did not observe any officers punch § 87(2)(b). Sgt. Kalicovic smelled pepper spray in the air but did not see this being used. Sgt. Kalicovic placed an open hand on § 87(2)(b)'s back and pushed him against the car in order to allow the officers to handcuff him. It took the officers approximately two minutes to handcuff § 87(2)(b). Sgt. Kalicovic noted that he believed the resistance exhibited by § 87(2)(b) would have merited the use of pepper spray. § 87(2)(b) refused to walk; Sgt. Kalicovic held one arm while PO Alfieri held the other and they pulled him into the 120<sup>th</sup> Precinct stationhouse.

§ 87(2)(b) was seated in front of the desk. Sgt. Kalicovic did not see any officer step on § 87(2)(b)'s hand or cell phone. He did not see any plainclothes officers interact with § 87(2)(b) inside of the stationhouse. Sgt. Kalicovic called for an ambulance to treat § 87(2)(b)'s eyes.

### **Medical Records**

On May 27, 2011, § 87(2)(b) was treated at § 87(2)(b) (encl. 9). § 87(2)(b) complained of headaches and pain to his right hand. There was no evidence of serious head injury, neurologic injury, chest injury, or abdominal injury. There was no evidence of any nasal injury. Mild tenderness above the right eyelid and on the right hand were noted. § 87(2)(b) was diagnosed with unspecified hand and head trauma and given Motrin, a painkiller.

### **NYPD Documents**

#### **NYPD SPRINT (encl. 10A)**

The SPRINT Report notes that Sector E requested assistance at 10:36 p.m. Multiple units responded and one individual was arrested for an assault at 10:49 p.m. No officers were injured.

#### **Command Log (encl. 10B)**

The Command Log notes that § 87(2)(b) had a bloody nose.

#### **Medical Treatment of Prisoner Report (encl. 10C)**

The Medical Treatment of Prisoner Report notes that § 87(2)(b) sustained a bloody nose and burning of his facial area (due to pepper spray).

§ 87(2)(a) 160.50

### **Status of Civil Proceedings**

- § 87(2)(b) filed a Notice of Claim with the City of New York on June 1, 2011, claiming that he was thrown off a bus and attacked by police and seeking an unspecified amount as redress (encl. 11).

§ 87(2)(a) Gen. Mun. § 50-h(3)

§ 87(2)(c), § 87(2)(b)

- § 87(2)(c), § 87(2)(b)

### Civilian's CCRB History

- This is the first CCRB complaint filed by § 87(2)(b) (encl. 2C).

### Subject Officers' CCRB History

- PO Alex Toro has been a member of the service for eleven years and there is one substantiated CCRB allegation against him (encl. 2A):
  - In Complaint #200302168, the substantiated allegation was Abuse (refusal to provide name/shield). As a result, the CCRB recommended command discipline but the NYPD imposed instructions.
- PO Matthew Alfieri has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. 2B).

### Conclusion

### Identification of Subject Officers

- PO Toro and the other officers agreed that PO Toro was the first officer to enter the bus and interact with § 87(2)(b). PO Toro is a white male officer; this fits the general description provided by § 87(2)(b). **Allegation A** has therefore been pleaded against PO Toro.
- PO Alfieri acknowledged handcuffing § 87(2)(b) and taking him into the stationhouse. PO Alfieri is a white male officer; this fits the general description provided by § 87(2)(b). **Allegation B** has therefore been pleaded against PO Alfieri.
- The investigation determined that § 87(2)(b) was pepper sprayed outside the stationhouse during his arrest. None of the officers were able to provide the identity of the officer who pepper sprayed § 87(2)(b) and because the incident occurred outside the stationhouse multiple officers responded. Without additional information, it is not possible to identify the officer who pepper sprayed § 87(2)(b). **Allegation C** has therefore been pleaded against "An officer" from the 120<sup>th</sup> Precinct.
- § 87(2)(b) alleged that a plainclothes officer interacted with him inside the stationhouse. All of the officers denied that this occurred and § 87(2)(b) was only able to describe this officer as a tall white male. Without additional information, it is not possible to identify this officer. **Allegation D** has therefore been pleaded against "An officer" from the 120<sup>th</sup> Precinct.

### Investigative Findings and Recommendations

**Allegation A – Force: PO Alex Toro used physical force against § 87(2)(b)**

**Allegation B – Force: PO Michael Alfieri used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that he was punched in the face by numerous officers. § 87(2)(b) and all of the officers denied that § 87(2)(b) was punched by an officer. § 87(2)(g) § 87(2)(b) admitted that he was intoxicated during the incident; he denied assaulting any individuals on the bus or resisting arrest, but this is directly refuted by witness testimony. § 87(2)(b) claimed that he sustained a broken nose, but his own medical records indicate this to be false. Not only did § 87(2)(b) refuse medical attention at the time of the incident, when he eventually went to the hospital he had no nasal injuries. § 87(2)(b) an independent witness who observed § 87(2)(b) until he was taken into the stationhouse, stated that no officers punched him. Finally, the officers all denied punching § 87(2)(b). While § 87(2)(b) sustained a bloody nose, it is undisputed that he was involved in a fight on the bus

prior to the officers' arrival. § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation C – Force: An officer used pepper spray against § 87(2)(b)**  
[REDACTED] alleged that he was pepper sprayed in the face for a full minute in front of the desk. The officers agreed that § 87(2)(b) was pepper sprayed, but claimed that this occurred outside the stationhouse while he was being apprehended. § 87(2)(b) who observed § 87(2)(b) inside the stationhouse, did not see him being pepper sprayed. § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

**Allegation D – Abuse of Authority: An officer damaged § 87(2)(b)'s property.**  
§ 87(2)(b) alleged that while he was in front of the desk an officer stomped on his phone, breaking it. § 87(2)(b) and all of the officers denied that this occurred. As discussed above (see **allegations A, B, and C**) § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_



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